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Filing date: **11/06/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060464
Party	Defendant Cheytac USA LLC
Correspondence Address	JERRY ROMANOFF JERRY ROMANOFF PC 4 OCEANVIEW COURT LONG BEACH, NY 11561 UNITED STATES jerry@trademark1attorney.com
Submission	Other Motions/Papers
Filer's Name	Milo S. COgan
Filer's e-mail	milos.cogan@fisherbroyles.com
Signature	/s/Milo S. Cogan
Date	11/06/2015
Attachments	Cheytac Motion to Reopen.pdf(25904 bytes) EXHIBITS A B C to MOTION TO REOPEN.pdf(4025023 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

SAFESIDE TACTICAL, LLC)	
)	
)	
Petitioner,)	
v.)	Processing No. 92060464
)	
CHEYTAC USA, LLC)	Registration No. 4,509,171
)	
Registrant.)	
)	
)	
)	

**REGISTRANT CHEYTAC USA, LLC’S MOTION TO REOPEN TIME TO RESPOND TO
PETITIONER’S MOTION FOR SUMMARY JUDGMENT IN LIGHT OF REGISTRANT
ATTORNEY’S DEATH**

Registrant CheyTac USA, LLC (“Cheytac”), hereby moves to reopen time to respond to Petitioner’s Motion for Summary Judgment so that it may file a respond to Petitioner’s Motion for Summary Judgment (the “Petitioner’s Motion”).

INTRODUCTION

On April 4, 2015, attorney for Registrant, Mr. Gerald Romanoff, passed away. A true and correct copy of Mr. Romanoff’s obituary is attached hereto as Exhibit “A.” At the time of Mr. Romanoff’s death, he was engaged in the active representation of Registrant in the instant matter. Since his passing, multiple deadlines in this case have expired, including the deadline for Discovery Conference and the opening of Discovery on July 6, 2015, as well as Initial Disclosures due on August 5, 2015. Since his passing, upon information and belief, notices in this proceeding have been sent to Mr. Romanoff and have not been sent to Registrant including notice of Petitioner’s Motion that was filed on August 26, 2015. As a result, Registrant failed to timely file a response to Petitioner’s Motion, even though there is evidence already in this case which would require that Petitioner’s Motion be denied.

ARGUMENT AND CITATION OF AUTHORITY

Registrant believes good cause exists to reopen time to respond to Petitioner's Motion in light of the death of Registrant's attorney, and for the following reasons:

1. Mr. Romanoff's death in the middle of the proceedings constitutes an extraordinary event in this matter that was, at the time, both sudden and unexpected.
2. Mr. Romanoff's passing served as a significant impediment to Registrant's ability to fairly pursue the matter in accordance with the time limits set in place prior to Mr. Romanoff's death.
3. Mr. Romanoff's illness and passing resulted in Registrant's failure to timely meet the statutory requirements for amendment of the subject registration to claim an earlier date of first use than that which is set forth in the original application. The failure to do so is an administrative technicality that is totally inconsistent with the evidence which Registrant intends to put forth if permitted to respond to the Motion for Summary Judgment.
4. As stated in the Declaration of David McCutcheon, attached hereto as Exhibit "B," Mr. Romanoff had control, care, and custody of all of Registrant's files in this matter and *CheyTac was never served with a copy of the Petitioner's Motion for Summary Judgment.*
5. Although the death of Registrant's attorney temporarily impeded its ability to fairly defend this cancellation action, Registrant has no intention of abandoning this matter and believes any prejudicial impact to Registrant's position or its Registration as a direct or indirect result of Mr. Romanoff's death is contrary to public policy, and that the Director is empowered with the express authority to prevent such an injustice from occurring pursuant to Trademark Rule 2.148.
6. In spite of being temporarily sidetracked by Mr. Romanoff's death, Registrant remains steadfast in its pursuit of this matter and believes there is a strong likelihood that it will ultimately prevail on the merits for the following reasons:

- a. Registrant is the owner of the registered trademark “SAFESIDE” (“Registrant’s Mark”) pursuant to its Application filed on or about February 2, 2013, and the Trademark issued on April 18, 2014;
- b. Registrant’s First Use in commerce of Registrant’s Mark occurred on June 24, 2011. A true and correct copy of the June 24, 2011 invoice demonstrating First Use is attached hereto as Exhibit “C”, which invoice was also attached to the Response to Petitioners Opposition to Grant Corrected Date of First Use Without Consent filed in this proceeding on February 10, 2015. Additionally, if permitted to respond to Petitioner’s Motion, Registrant will present other verified evidence demonstrating earlier first use and continuous use that will defeat Petitioner’s Motion.
- c. On November 29, 2014, Registrant filed a Section 7 to Amend the Registration with the USPTO to correct the good faith error on the original application, which had incorrectly identified the date of first use as December 15, 2012.
- d. Petitioner filed its Petition for Cancellation after Registrant had filed its Section 7 to Amend the Registration to indicate the correct date of First Use as June 24, 2011. See, Exhibit “C” hereto.
- e. As stated in Paragraph 7 of the Opposition to Registrant’s Motion to Grant Corrected Date of First Use Without Consent (filed in this proceeding by Petitioner), Petitioner’s claims December 2, 2012 as the date it first used the Safeside mark -- approximately eighteen (18) months after Registrant’s first use of its Registered Mark.

7. As stated in the Declaration of David McCutcheon, attached hereto as Exhibit “B,” Registrant made good faith efforts to secure and retain new counsel, and Registrant has in fact retained new counsel.

8. Registrant’s failure to obtain new counsel constitutes excusable neglect, and has not caused significant delay in these proceedings.

9. Petitioner would not be prejudiced if this motion is granted and Registrant is given an opportunity to respond to Claimant's Motion for Summary Judgment on the merits.

10. The Trademark Trial and Appeal Board Manual of Procedure § 528.01 provides that:

A party moving for summary judgment has the burden of demonstrating the absence of any genuine dispute of material fact, and that it is entitled to judgment as a matter of law. [Note 5.] This burden is greater than the evidentiary burden at trial. [Note 6.] The burden of the moving party may be met by showing "that there is an absence of evidence to support the nonmoving party's case." [Note 7.]

11. In this case there is not "an absence of evidence to support the nonmoving party's case" and instead there is already evidence in this case (which evidence, along with other evidence of first use and continuous use prior to Petitioner's use date) shall be verified if Registrant is permitted to respond to the Motion for Summary Judgment) demonstrating that Registrant has a valid prior use date that would invalidate Petitioner's claims. See, Exhibit "C" hereto.

12. There is a strong preference for resolving cases on their merits.

13. The newly retained counsel requires a reasonable amount of time to prepare and file a response to Petitioner's Motion.

14. If Registrant is given the opportunity to respond the Petitioner's Motion, there is the possibility that the parties will be afforded a renewed opportunity to pursue settlement negotiations.

For the foregoing reasons, Registrant respectfully requests to reopen the time within which to respond to Petitioner's Motion for Summary Judgment, so that a response can be filed and so that the issues addressed therein may be addressed on the merits instead of being awarded on the basis of procedural irregularities.

Respectfully submitted, this 6th day of November, 2015.

FISHERBROYLES, LLP

/s/Milo S. Cogan

Milo S. Cogan

Georgia Bar No. 500813

4140 Roswell Rd.
Atlanta, Georgia 30342
(404) 606-1169
(404)935-0271 (fax)
Milo.cogan@fisherbroyles.com

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

SAFESIDE TACTICAL, LLC)	
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Petitioner,)	
v.)	Processing No. 92060464
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CHEYTAC USA, LLC)	Registration No. 4,509,171
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Registrant.)	
)	
)	
)	

CERTIFICATE OF SERVICE

This will certify that the foregoing REGISTRANT CHEYTAC USA, LLC'S MOTION TO REOPEN TIME TO RESPOND TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT IN LIGHT OF REGISTRANT ATTORNEY'S DEATH was served on the following via United States mail, first class postage prepaid:

Matthew H. Swyers
The Trademark Company PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180

This 6th day of November, 2015.

/s/Milo S. Cogan
Milo S. Cogan

EXHIBIT "A"

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The New York Times
Thursday, November 5, 2015

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GERALD ROMANOFF

Obituary

ROMANOFF-- Gerald "Jerry" We have just lost our most precious husband, father, grandfather and great grandfather. Jerry would have been 79 on April 30. His body succumbed to complications due to cancer on April 4, 2015. Jerry loved life, and he loved all of us, his family and his friends. He had an adventurous spirit, and was always up for everything. He loved working, hunting, opera, poker, exotic travel, Broadway musicals and working around the house. Most of all he loved being with us, just hanging out. He devoted himself in a leadership capacity to the betterment of every community and business organization with which he came in contact. He did everything in life that he had wanted to do. Jerry truly leaves his mark on the world. The heartbroken family he leaves behind are Sheryl, Valerie, Richard and Debra, Robert, Zak and Mila, Joy, Danny, Doug and Tal, Natasha, Sabrina, Nicholas, Alexander, and Zoe. The funeral will be at Riverside Chapel, 1450 Broadway, Hewlett, NY, on Monday, April 6, 2015 at 1PM.

Published in The New York Times on Apr. 5, 2015

Print | View Guest Book | [View 8 Records for G. ROMANOFF on Ancestry](#)

Gerald Romanoff

Click name above for additional details at:
www.boulevardriversidechapel.com.

Arrangements under the direction of:

Boulevard-Riverside-Hewlett Chapel
1450 Broadway | Hewlett, NY 11557 | (516) 295-3100

Guest Book

11 entries

The Guest Book is expired.

[Restore the Guest Book](#)

Funeral Home Details

Dignity
MEMORIAL

Boulevard-Riverside-Hewlett Chapel
Hewlett, NY (516) 295-3100

Website
Map/Directions



For more information about:

GERALD ROMANOFF

[VISIT THE FUNERAL HOME WEBSITE NOW](#)

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Records for G. Romanoff

- [View 1 Birth Records](#)
- [View 74 Marriage/Divorce Records](#)
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Genealogy Results for Gerald Romanoff

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Records Found

Name	Location
Gerald Romanov	SHELBY TOWNSHIP, MI
Gerald Romanoff	NEW YORK, NY
Gerald Romanoff	EAST ATLANTIC B, NY
Gerald Romanoff	NEW ROCHELLE, NY
Gerald Romanoff	NEW YORK, NY
Gerald Romanoff	NEW YORK, NY

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EXHIBIT "B"

11

3.

I did not immediately learn about Mr. Romanoff's death until several weeks after his passing. Once I was notified about Mr. Romanoff's death, I made my best and good faith efforts to retrieve the files in this matter in Mr. Romanoff's custody.

4.

It took some time to retrieve the files, but once I did, I immediately sought referrals to other suitable attorneys who could serve as substitute counsel in this matter.

5.

I relied very heavily on Mr. Romanoff's experience and judgment in managing my Registered Trademark. I am not an attorney and did not understand all of the complexities involved with Registering or defending my Registered Trademark. I did not understand or appreciate the seriousness of the Cancellation claim by Petitioner nor did I understand that deadlines were imminent or time was of the essence.

6.

I relied very heavily on Mr. Romanoff's experience and judgment in managing my Registered Trademark. I am not an attorney and did not understand all of the complexities involved with Registering or defending my Registered Trademark. I did not understand or appreciate the seriousness of the Cancellation claim by Petitioner nor did I understand that deadlines were imminent or time was of the essence.

7.

At all relevant times, all of the files in this matter were entirely in the care, custody, and control of Mr. Romanoff.

8.

I was never served with Petitioner's Motion for Summary Judgment or any other document in this case after Mr. Romanoff passed away. I do not know for sure, but I suspect that Petitioner may have sent continued sending its documents, filings and other correspondence to Mr. Romanoff's office even after his death. I am not aware whether Petitioner or its attorney knew about Mr. Romanoff's death and, if so, when they learned about it.

9.

After the time I recovered the files, I spent a considerable amount of time and effort contacting and interviewing attorneys with the hope of finding a suitable replacement for Mr. Romanoff.

10.

Based on my conversations with Mr. Romanoff, I was confident in the strength of my case and wanted to maximize the chances of a successful outcome by entrusting it to an equally capable attorney. Although it took longer than I had hoped, I was finally able to find a substitute attorney that I am confident can serve as a capable replacement for Mr. Romanoff.

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Now that I have finally found a replacement attorney, I respectfully request that the proceedings be suspended so that my new attorney can have adequate time to prepare for the matter. I am also asking to suspend the case so that I may reopen settlement negotiations with Petitioner.

Executed at Nashville GA 3/6/15, Georgia

Date: November 6, 2015 By:

David B. McCutcheon

David McCutcheon, President

EXHIBIT "C"



Receipt

CheyTac USA

Distance-Power-Accuracy

541 Hazel Ave, Nashville, GA 31639
Phone 229.686.3219 Fax 1.888.519.5242

INVOICE: MFJUNE2011

DATE: JUNE 24, 2011

EXPIRATION DATE: JULY 2012

TO Name: Mark Fields
Address: 3116 Gideon Court
Waldorf, MD 20602
Fax:
Email: mark.l.fields@gmail.com

SALESPERSON	JOB	SHIPPING METHOD	SHIPPING TERMS	DELIVERY DATE	PAYMENT TERMS	DUE DATE
Joe	MF	Best	NA	NA	Paid in Full	Expected

QTY	ITEM #	DESCRIPTION	UNIT PRICE	DISCOUNT	LINE TOTAL
1	Rifle	.308 Win. Mag. Custom "Safeside"	\$6,000.00	\$0.00	\$6,000.00
			SUBTOTAL	\$0.00	\$6,000.00
			SHIPPING (EST)		N/A
			TOTAL		\$6,000.00

THANK YOU FOR YOUR BUSINESS!